

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: August 15, 2001  
TIME: 9:00 am  
PLACE: DLNR Board Room  
Kalanimoku Bldg.

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 9:07 a.m.

The following were in attendance:

**MEMBERS:** Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Mr. David Nobriga, Mr. Herbert Richards, Jr.

**STAFF:** Linnel Nishioka, Roy Hardy, Eric Hirano, Dean Nakano, Ryan Imata, Lenore Nakama, Glenn Bauer, Dean Uyeno

**EXCUSED:** Mr. Brian Nishida and Mr. Robert Giraldo

**COUNSEL:** Edsel Yamada

**OTHERS:** Cliff Jamile, Barry Usagawa, Bob Smolenski, Bill Moore, Bob Glascott, Ardythe Harms, Randy Ching

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

Chairperson Coloma-Agaran asked the Commission if he could have a motion to include an added item, Maui Meadows Homeowner Association; c/o James Williamson, Vice President; Petition for Ground Water Management Area Action; Iao Aquifer System; Wailuku, Maui.

MOTION: (RICHARDS/NOBRIGA)  
To approve the Added Item.  
UNANIMOUSLY APPROVED.

**1. Minutes of the July 18, 2001 meeting**

MOTION: (NOBRIGA/RICHARDS)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**2. Old Business/Announcements by Deputy Director Linnel Nishioka**

For Items 6 and 7, the Hamakua Energy Partners (HEP) have filed a request for contested case hearing. Beylik Drilling did not submit a request for contested case hearing. The Commission will be able to proceed with the item concerning Beylik Drilling. This matter was cleared with the Attorney General's office. A hearing officer will be appointed and the Commission will have to hear the case themselves.

Deputy Director Nishioka made note of the numerous newspaper articles on drought and how it has been affecting the water levels on Oahu. A handout from the State Drought Coordinator showed the analysis of all the County water systems and the status of their pumpage. She spoke to the Chief Engineer of Maui County Department of Water Supply and he stated that he felt that the drought is not necessarily affecting the water levels but the Department is keeping a close watch on it. Most of the counties are up to date in their reporting and Deputy Director Nishioka is keeping close contact with them.

The U.S. Geological Survey (USGS) will be briefing the Commission next month on their analysis of the statewide monitoring system on drought.

**3. Honolulu Board of Water Supply Briefing on the Status of its System by Manager and Chief Engineer Cliff Jamile**

Manager and Chief Engineer of the Honolulu Board of Water Supply (BWS), Cliff Jamile discussed the ground water situation for the island of Oahu. He started by stating that this is the fourth year that Oahu has not received enough rains to replenish the ground water supply. According to the BWS staff and their findings, Oahu will experience another year of low rain. Each summer the area heads or aquifer's starting point is a foot lower than the previous year. According to the individual stations and the composite withdrawals from the ground water aquifer, the allocated amounts have not exceeded the total. The demands have been running approximately 171 mgd during the summer. Public appeals through media advertisements have had good response. Within the last two weeks, the usage dropped to 167 mgd. The overcast skies have helped to drop the demands. Despite the reports from the newspapers, the wells are not running dry. BWS is concerned because continuous operations without replenishments will lead to more severe restrictions instead of voluntary conservation as BWS is asking for today. The BWS may require seeking more mandatory restrictions only if the water level is at a point where drastic measures may need to be implemented.

There are 12 index stations: 9 in Honolulu, 1 in Makaha and 2 in the Windward part of Oahu. The stations are checked for draft, area heads, chlorides, and where possible measure the transition zone, where fresh and saltwater blends are 50 percent concentrate. In general the draft has been within prescribed units. The chlorides have moved up slightly but not to a detrimental point. The heads are dropping as stated earlier, a foot lower each summer. The mid point in many of the stations remain level. There is an upward trend in most of the stations in the Honolulu area.

Additional sources have not been brought on line yet. BWS would like to expedite the completion of the stations so that the load of the withdrawals can be spread over more sources so that withdrawals are evenly distributed. Waipahu 3 needs an easement to install a drain line. That is needed to provide proper operation. Six units are down but mechanical repairs are in process. As soon as that is on line then the draft will be balanced throughout the system.

Overall, if the weather is overcast and rainy, drastic measures of conservation will not be needed to implement.

The BWS is already undertaking a project to desalinate ocean water. To start, 5 mgd will be used to gain operating experience and estimate cost. Later the Board will decide if it is feasible. Efforts are also underway to take water that is already available on the surface and process it through wastewater treatment plants to recycle the water for agriculture and irrigation of golf courses. The Board is also looking into the feasibility of taking over additional wastewater facilities for the purpose of operating recycled plants that would make more R1 water available for public use.

**4. Andy Fitts, Waieli Drilling, AFTER-THE-FACT APPLICATION FOR WELL PERMIT, Moloaa Plantation (Well No. 1120-37), Well Abandonment: 6-inch Casing Diameter, 101-ft. Deep Well, TMK 4-9-011:005, Koolau Road, Kauai**

PRESENTATION OF SUBMITTAL: Lenore Nakama

RECOMMENDATIONS:

Staff recommends that the Commission:

- A. Find Waieli Drilling in violation of Administrative Rule 13-168-16(b) for the abandonment/sealing of Well No. 1120-37 without a permit.
- B. Assess a fine of two hundred fifty dollars (\$250) to Waieli Drilling for the unpermitted work, to be paid within thirty (30) days from the date of this submittal.
- C. Find that future applications from an applicant who has not paid fines or met alternative settlements or for a project with outstanding violations may be considered incomplete until sanctions are fulfilled and/or violations are corrected.
- D. Approve the issuance of a well abandonment permit for Moloaa Plantation (Well No. 1120-37), subject to the standard conditions in Exhibit 5.

MOTION: (RICHARDS/NOBRIGA)

To approve the submittal.

UNANIMOUSLY APPROVED.

**5. University of Hawaii, Kewalo Basin Marine Mammal Lab, AFTER-THE-FACT APPLICATION FOR A WATER USE PERMIT, Kewalo Basin Salt (Well No. 1751-05), TMK 2-1-58:60, Existing (Marine Research) Use for 1.440 mgd, Nuuanu (Caprock) Ground-Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Lenore Nakama

RECOMMENDATIONS:

Staff recommends that the Commission:

1. Find the applicant in violation of pumping a well without a water use permit in a water management area.
2. Assess no fines for the violation in recommendation 1.
3. Approve the issuance of Water Use Permit No. 590 to Kewalo Basin Marine Mammal Lab for the reasonable and beneficial use of 1.440 million gallons per day of salt water for Marine Research from the Kewalo Basin Salt (Well No. 1751-05), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:
  - a. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
  - b. Standard Condition 16 is waived.
  - c. Require the applicant to submit a completed Registration of Well and Declaration of Water Use (Exhibit 2) within thirty (30) days from the date of this submittal.

After a discussion regarding the need for a Department of Health (DOH) discharge permit, Commissioner Anderson suggested that state inform the permittee of the need for a discharge permit in the letter notifying the permittee of the Commission's action.

MOTION: (NOBRIGA/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

**6. Hamakua Energy Partners / Beylik Drilling, AFTER-THE-FACT PUMP INSTALLATION PERMIT APPLICATION, Enserch 1 Well (Well No. 6528-02), Honokaa, Hawaii**

PRESENTATION OF SUBMITTAL: Ryan Imata

## AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find ~~Hamakua Energy Partners and~~ Beylik Drilling in violation of HAR §13-168-12(a) 13.
- B. Impose a one-time fine of [\$18,000 on the applicant, Hamakua Energy Partners, and \$18,000] \$250 on Beylik ~~as summarized in Exhibit 5~~ payable within 30 days.
- C. ~~Approve the issuance of an after the fact Pump Installation Permit for the Enserch #1 Well (Well No. 6528-02) after the fine is paid, subject to standard conditions in Exhibit 6, and the following special conditions:~~
  - 1. ~~The well should not be used for drinking water unless it is properly tested and treated.~~
  - 2. ~~If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.~~
- C. Suspend any current, pending or future applications by ~~both the applicant and the driller until the fines are paid, and the applicant/driller completes the permit process for this well.~~

Commissioner Anderson stated that the Commission might want to consider identifying who the permittee is and fine them the appropriate penalty and let them go after and apportion responsibility. Or, in cases where there are multiple parties involved, the Commission needs to determine how to apportion responsibility.

Mr. Roy Hardy stated that the Code specifies that the driller is supposed to obtain the applications and permits. The Code identifies this.

## TESTIMONY BY APPLICANT:

Robert Smolenski, Esq., Attorney for Beylik Drilling along with William Moore, Vice President of Beylik and Bob Glascott, Project Manager, stated that Beylik Drilling purchased the business from Roscoe Moss Hawaii about 2 years ago. Roscoe Moss and Bill Moore have been doing drilling projects in Hawaii for more than 30 years. Mr. Smolenski has been representing Beylik Drilling for more than 25 years and said that this was the first time a citation had been issued. He detailed the August 10, 2001 letter from Bill Moore to Deputy Director Nishioka to make clear of the events that happened. Mr. Smolenski stated

that he felt Beylik should not be fined for Well 1 because as soon as it was determined that there was no permit, they diligently went through the process to obtain one. They attempted, in due diligence, to remedy the violation. He stated that if the Commission would act on this, then there should be no violation towards to driller.

Commissioner Anderson requested that both issues (Items 6 and 7) of staff's submittals be heard together before making the final decision.

**7. Hamakua Energy Partners / Beylik Drilling, AFTER-THE-FACT PUMP INSTALLATION PERMIT APPLICATION, Enserch 2 Well (Well No. 6528-03), Honokaa, Hawaii**

PRESENTATION OF SUBMITTAL: Ryan Imata

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find ~~the Hamakua Energy Partners and~~ Beylik Drilling in violation of HAR §13-168-12(a).
- B. Impose a fine of ~~\$21,000 on Hamakua Energy Partners, and \$21,000~~ \$6,944 on Beylik Drilling as summarized in Exhibit 6, payable within 30 days.
- C. ~~Approve the issuance of an after the fact Pump Installation Permit for the Enserch 2 Well (Well No. 6528-03) after the fine is paid, subject to standard conditions in Exhibit 7, and the following special conditions:~~
  - 1. ~~The well should not be used for drinking water unless it is properly tested and treated.~~
  - 2. ~~If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.~~
- C. Suspend any current, pending or future applications by ~~both the applicant and the driller until the fines are paid. and the applicant/driller completes the permit process for this well.~~

TESTIMONY BY APPLICANT:

Mr. Smolenski stated that Beylik did the pumping at the request of Hamakua Energy Partners (HEP). It was Beylik's well but HEP's pump. The reports were filed in a timely

period. The pump application signed by Bill Moore was signed when everyone believed that that was a test pump. He felt that it would be more appropriate to look at the permittee as far as responsibility is concerned, financing and scheduling. With regard to staff's recommendation, Mr. Smolenski hoped that no violation would be imposed on Beylik for pump no. 1. For pump no. 2, if staff found a technical violation and a repeat violation, Mr. Smolenski stated that he hoped the Commission would consider the mitigating circumstances. Beylik took action as soon as requested and responded promptly to same.

Mr. Bill Moore stated that in the process of developing a well if a test pump is used instead of a permanent pump, the cinders could damage the machinery. Because of the timeline some drillers would prefer using a permanent pump to do the test.

Mr. Glenn Bauer confirmed what Mr. Moore stated about the line shaft test pump. The standards states that any well greater than 70 gpm has to perform a step drawdown test. A test pump would be better used to get data on the step drawdown test.

Mr. Moore stated that they were contracted to provide additional services to do the second test pump. The second pump was installed to perform the second test.

Commissioner Anderson asked Chair Coloma-Agaran to enter into executive session to confer with legal counsel on Items 6 and 7.

MOTION: (RICHARDS/NOBRIGA)

At 11:07 am the Commission went into Executive Session to confer with legal counsel.

The meeting was resumed at 11:50 am.

On Item 6, Commissioner Anderson made a motion to fine Beylik Drilling, Inc. in violation of not notifying the Commission that they had installed a pump that is clearly stated in the standards. Under the circumstances he felt that the fine be substantially reduced and fine Beylik for 1 day violation which is \$250.

MOTION: (ANDERSON/RICHARDS)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

On Item 7, Commissioner Richards made a motion to accept staff's amended recommendations.

MOTION: (RICHARDS/NOBRIGA)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

**8. Ms. Ardythe Harms RECONSIDERATION OF FINES, Vacationland #1 through #4 Wells (Well No. 2979-02 through -05), Kapoho, Hawaii**

PRESENTATION OF SUBMITTAL: Ryan Imata

RECOMMENDATIONS:

Staff recommends that the Commission considers all the facts and circumstances and determines whether a reduction in fine is warranted.

Commissioner Richards stated that a mistake was made in his judgment of the violation. He felt that the Commission should have an appeal policy.

Commissioner Anderson suggested that the fine be reduced from \$5,872 to a one-time fine of \$1,700 (\$800 – original fine violation plus \$900 – mitigative component).

MOTION: (RICHARDS/ANDERSON)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

**ADDED ITEM:**

**Maui Meadows Homeowner Association, c/o James Williamson, Vice President, Petition for Ground Water Management Area Action, Iao Aquifer System, Wailuku, Maui**

PRESENTATION OF SUBMITTAL: Linnel Nishioka

RECOMMENDATION:

That the Commission:

- A. Extend the 60-day chairperson recommendation deadline to accommodate and gather comments from the various county agencies as required by law.
- B. The chairperson shall make a recommendation on the issue of continuance of the designation process for this petition at the Commission's November meeting.

MOTION: (NOBRIGA/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

Deputy Director Nishioka recognized Ryan Imata for the work he had completed on some very difficult submittals and commended him on providing thorough and detailed factual investigations and findings.



This meeting was adjourned at 12:33 pm.

Respectfully submitted,

FAITH F. CHING  
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA  
Deputy Director